

THE
ROGER
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INC.

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August 9, 2013

VIA U.S. MAIL

Robert Bonjean
Morgan County State's Attorney
3rd Floor of the Morgan County Courthouse
300 West State Street
Jacksonville, IL 62650

Chief Tony Grootens
Jacksonville Police Department
200 West Douglas Avenue
Jacksonville, IL 62650

Re: First Amendment right to audio record on-duty police

Dear Mr. Bonjean and Chief Grootens:

I write regarding news accounts that a Jacksonville man, Randy Newingham, was detained and threatened with prosecution, solely because he made an audio recording of an on-duty police officer. *See* Cody Bozarth, "Police critic awaits word on eavesdropping charges," *Journal-Courier* (Aug. 2, 2013); Cody Bozarth, "State's attorney not prosecuting eavesdropping charge," *Journal-Courier* (Aug. 6, 2013). One article quotes Mr. Bonjean as stating: "[T]echnically it's a felony charge, so I have three years from the date of the offense to file a charge." It also quotes Chief Grootens as saying, "I told [Mr. Newingham] not to be doing it. He honestly thought he was OK to do it, so now if he continues to do it, I can't tell you that he certainly won't be arrested."

Mr. Newingham's action—audio recording an on-duty police officer in a public place—is protected by the First Amendment. *See ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), cert. denied, 133 S. Ct. 651 (2012). The Illinois Eavesdropping Act violates the First Amendment as applied to such audio recording. *Id.* This decision is controlling throughout Illinois. For your convenience, a copy of the opinion is enclosed.

By August 23rd, please advise me whether civilians in Jacksonville will face arrest, and in Morgan County will face prosecution, if they audio record on-duty police officers. If you have any questions, please do not hesitate to call me at (312) 201-9740, extension 316, or to email me at aschwartz@aclu-il.org.

Sincerely,

Adam Schwartz
Senior Staff Attorney

cc: Randy Newingham
Cody Bozarth